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6 UNITED STATES DISTRICT COURT

7 FOR THE EASTERN DISTRICT OF CALIFORNIA

8
9 JOHN ERIC PARTANEN,

10 Plaintiff,

11 v.

12 WESTERN UNITED STATES PIPE BAND
ASSOCIATION, et al.,

13 Defendants.

14 Case No. 1:21-cv-00588-BAM

**15 ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

(Doc. 37)

**ORDER DENYING PLAINTIFF'S MOTIONS
TO AMEND AS MOOT**

(Docs. 61, 63)

16 **I. Introduction**

17 Plaintiff John Eric Partanen ("Plaintiff"), proceeding pro se, initiated this civil action on
18 April 8, 2021. This action proceeds on Plaintiff's First Amended Complaint against
19 Defendants Western United States Pipe Band Association ("WUSPBA") and Jeff Mann
20 (collectively "Defendants") arising from termination of his WUSPBA membership. (Doc. 13.)

21 On July 26, 2021, Defendants filed a motion to dismiss pursuant to Federal Rules of Civil
22 Procedure 8(a) and 12(b)(6) on the grounds that "each of them either fails to state a claim upon
23 which relief can be granted, is barred by the statute of limitations, or fails to provide anything
24 more than conclusory allegations that would support a finding on essential elements of the
25 claims." (Doc. 37 at 4.) Plaintiff opposed the motion on July 26, 2021.¹ (Doc. 42.)

26
27 ¹ In addition to opposing the motion to dismiss, Plaintiff filed multiple, subsequent motions to amend his
complaint to eliminate bullying as a cause of action and to add breach of the duty to act in good faith and fair
dealing as a cause of action. (Docs. 61, 63.) Because Plaintiff will be granted leave to amend his complaint,
28 Plaintiff's motions to amend are unnecessary and will be denied as moot.

1 Defendants replied on August 9, 2021. (Doc. 45.) Although not permitted leave of court,
2 Plaintiff filed a rebuttal on August 12, 2021. (Doc. 47.)

3 The Court directed that the pending motions, including the instant motion to dismiss,
4 would be heard and decided on the papers. (Doc. 48.) Based on the parties' consent, the action
5 was subsequently reassigned to a United States Magistrate Judge for all purposes pursuant to 28
6 U.S.C. § 636(c)(1). (Doc. 57.)

7 Having considered the parties' briefs, arguments, and record in this action, Defendants'
8 motion to dismiss will be granted as discussed in further detail.

9 **II. Allegations in First Amended Complaint**

10 Plaintiff is a professional Scottish bagpiper and former member of the WUSPBA, a
11 Nevada entity that regulates Scottish bagpiping, drumming, Scottish drum majoring, and bagpipe
12 band contests in eight western states, including California. (Doc. 13 at ¶¶ 8, 10, 12)

13 In February 2018, WUSPBA terminated Plaintiff's membership. (*Id.* at ¶ 12.) Plaintiff
14 appealed the termination to the WUSPBA Board. As a result of the dispute, and to reinstate
15 Plaintiff's membership, the parties entered into the Western United States Pipe Band Association
16 Music Board Informal Resolution Among the Parties John Partanen and the WUSPBA Executive
17 Committee ("Informal Resolution"). (Doc. 13 at ¶¶ 13-14; Ex. 2 at pp. 61-62.)

18 In 2019, there was an alleged incident at the United Scottish Society of Southern
19 California Highland Games. Plaintiff was approached by a WUSPBA member, who reportedly
20 accused Plaintiff of cheating and threatened the band with disqualification. After the contests,
21 Plaintiff approached the WUSPBA member, telling her that she had violated contest rules. The
22 WUSBA member claimed Plaintiff was abusive, and Defendant Mann, WUSPBA's president,
23 called Plaintiff about the incident. The matter was later dropped. (Doc. 13 at ¶ 15.)

24 In 2020, Plaintiff sent emails to Defendant Mann asking for help recovering entry fees for
25 the 2020 Las Vegas Highland Games, which were about to be cancelled due to COVID-19.
26 Defendant Mann and WUSPBA reportedly viewed these emails as a breach of the Informal
27 Resolution. Plaintiff alleges that Defendant Mann responded with threats and accusations of
28 bullying. Plaintiff claims that these constituted false allegations of a crime and an effort to

1 coerce Plaintiff into silence. (Doc. 13 at ¶ 16.)

2 Plaintiff subsequently decided to run for vice-president of WUSPBA. Plaintiff claims
3 that Defendants viewed this as a hostile act. Plaintiff ran his campaign by posting blogs on a
4 Facebook page prepared by WUSPBA member Gary Speed and entitled “wuspba elections.”
5 (Doc. 13 at ¶ 17.) Defendant Mann reportedly sent an email to Mr. Speed on May 12, 2020,
6 accusing Plaintiff and Mr. Speed of copyright infringement relating to the Facebook posts.
7 Plaintiff claims that there is no copyright or registered trademark for the term “WUSPBA” or
8 any derivations of it. (*Id.* at ¶ 18.) Plaintiff therefore alleges that Defendant Mann falsely
9 accused him of copyright infringement, resulting in defamation.

10 On September 2, 2020, Plaintiff sent an email to WUSPBA’s president reminding him
11 that WUSPBA was bound by Chapter 82 of the Nevada Revised Statutes regarding the October
12 2020 annual general meeting. This reminder allegedly was viewed as a hostile act by the
13 WUSPBA executive committee and Defendant Mann in breach of the Informal Resolution.
14 Plaintiff alleges that he was concerned that WUSPBA would not notify solo members of their
15 right to vote by proxy as required by the Nevada statutes. Plaintiff asserts that WUSPBA did not
16 notify its members of this right. WUSPBA also failed to gain advance consent before holding
17 the 2020 general meeting online due to COVID-19.

18 At the October 2020 general meeting, Plaintiff was given two minutes to attempt to
19 convince the membership in attendance to vote for him as the next vice president. Plaintiff
20 reportedly was prepared to deliver a 30-minute speech and claims that the two minutes was
21 woefully inadequate. He was not elected vice president.

22 After the 2020 general meeting, the newly elected WUSPBA Executive Committee
23 retained counsel in Reno, Nevada to justify termination of Plaintiff’s WUSPBA membership.
24 WUSPBA accused Plaintiff of breaching the Informal Resolution when he contacted the
25 WUSPBA to ask for help recovering his entry fees from the Las Vegas Highland Games.
26 WUSPBA also claimed that Plaintiff made unreasonable demands and insisted that WUSPBA
27 return the fees, not the sponsor, and if the fees were not returned, then he would take legal action.
28 Plaintiff claims that none of his emails contained unreasonable demands or a threat to bring legal

1 action against WUSPBA. WUSPBA also used Plaintiff's reminders that they must follow
2 Nevada statutes as a violation of the Informal Resolution.

3 After multiple conflicts with Plaintiff, WUSPBA elected to conduct a review of
4 Plaintiff's membership on December 5, 2020. (*Id.* at ¶¶ 23-24.) WUSPBA concluded its
5 membership review on December 11, 2020, and terminated Plaintiff's membership. (*Id.* at ¶ 26.)

6 On December 14, 2020, Plaintiff sent a letter objecting to termination of his membership.
7 He also sent a letter to Ken Sutherland, chairman of the WUSPBA Music Board, notifying him
8 of an appeal. On December 17, 2020, Plaintiff received an email from WUSPBA's counsel
9 indicating that Plaintiff's appeals were denied.

10 Plaintiff then attempted to determine his new status and eventually hired counsel to gain
11 answers. Plaintiff's counsel reportedly was informed that Plaintiff would not be allowed to
12 compete as a solo bagpiper in contests sanctioned by WUSPBA. Plaintiff also could not lead or
13 perform with the bagpipe band he co-founded in contests sanctioned by WUSPBA or the band
14 would be disqualified.

15 On February 17, 2021, Plaintiff sent a personal appeal to WUSPBA's president, along
16 with a follow-up message requesting that he be allowed to lead and perform with the Kern
17 County Pipe Band. WUSPBA's counsel responded, denying the personal appeals.

18 Gary Speed and the Kern County Pipe Band both requested that the dispute with
19 WUSPBA regarding Plaintiff's membership be submitted to binding arbitration. These requests
20 were denied. Plaintiff claims that he also attempted to send this dispute to mediation or an
21 informal settlement conference.

22 Plaintiff now brings this action against Defendants to reinstate his membership in the
23 WUSPBA. He alleges (1) unenforceability of the Informal Resolution; (2) breaches of the
24 Informal Resolution; (3) defamation of character by Defendant Mann; (4) bullying by the
25 WUSPBA; (5) coercion by WUSPBA and Defendant Mann; (6) intentional infliction of
26 emotional distress; and (7) statutory violations of Nevada law. Plaintiff seeks declaratory and
27 equitable relief, along with damages. (*See generally* Doc. 13.)

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1 **III. Defendants' Motion to Dismiss**

2 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim, and
 3 dismissal is proper if there is a lack of a cognizable legal theory or the absence of sufficient facts
 4 alleged under a cognizable legal theory. *Conservation Force v. Salazar*, 646 F.3d 1240, 1241-42
 5 (9th Cir. 2011) (quotation marks and citations omitted). To survive a motion to dismiss, a
 6 complaint must contain sufficient factual matter, accepted as true, to state a claim that is
 7 plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v.*
 8 *Twombly*, 550 U.S. 544, 555 (2007)) (quotation marks omitted); *Conservation Force*, 646 F.3d at
 9 1242; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). In considering a motion to
 10 dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must accept as true the
 11 allegations of the complaint in question, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and
 12 construe the pleading in the light most favorable to the plaintiff. *Jenkins v. McKeithen*, 395 U.S.
 13 411, 421 (1969); *Meek v. Cty. of Riverside*, 183 F.3d 962, 965 (9th Cir. 1999). However, the
 14 Court need not credit “naked assertions,” “labels and conclusions” or “a formulaic recitation of
 15 the elements of a cause of action.” *See Twombly*, 550 U.S. at 555–57.

16 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and
 17 plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P.
 18 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of
 19 a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at
 20 678 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to
 21 ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*,
 22 550 U.S. at 570). While factual allegations are accepted as true, legal conclusions are not. *Id.*;
 23 *see also Twombly*, 550 U.S. at 556–57.

24 **A. Declaratory Relief**

25 In his first cause of action, Plaintiff contends that the Informal Resolution is
 26 unenforceable. He alleges that he was under undue influence from the WUSPBA Music Board
 27 and WUSPBA Executive Committee to sign it. Plaintiff’s attorney advised him against any
 28 negotiations of the terms of the agreement as WUSPBA may have withdrawn its offer. Plaintiff

1 therefore alleges that negotiations were not an option. Plaintiff further alleges that the terms of
2 the agreement were confusing, ambiguous, and unconscionable. Plaintiff seeks a declaration
3 from the Court that the Informal Resolution is null, void, and unenforceable. (Doc. 13 at ¶¶ 33-
4 34.)

5 In moving to dismiss this cause of action, Defendants argue that Plaintiff fails to identify
6 a single act by WUSPBA that would constitute undue influence. Defendants assert that all of
7 Plaintiff's allegations regarding undue influence pertain to actions taken by his attorney, who is
8 not a party to the Informal Resolution. Defendants further argue that Plaintiff fails to allege any
9 facts supporting substantive or procedural unconscionability. To that end, Defendants contend
10 that Plaintiff does not identify a single term in the Informal Resolution that is objectively
11 unreasonable to show substantive unconscionability. Defendants also contend that Plaintiff
12 admits he was free to consult with independent counsel before signing the Informal Resolution,
13 eliminating any implication that the agreement was procedurally unconscionable. (Doc. 37 at 6-
14 7.)

15 Plaintiff counters that the Informal Resolution is unenforceable due to undue influence
16 and unconscionability and that Defendants breached the Informal Resolution when they placed
17 him on probation. He contends that his claims are clearly stated and supported by
18 documentation. (Doc. 42 at 3-4.)

19 1. Undue Influence

20 Undue influence consists of the following:

21 1. In the use, by one in whom a confidence is reposed by another, or who holds
22 a real or apparent authority over him, of such confidence or authority for the
23 purpose of obtaining an unfair advantage over him;
24 2. In taking an unfair advantage of another's weakness of mind; or,
25 3. In taking a grossly oppressive and unfair advantage of another's necessities
26 or distress.

27
28 Cal. Civ. Code § 1575.² “[U]nder California law a party cannot successfully invoke the doctrine
of ‘undue influence’ to escape an apparent contract unless that party proves two things: (1) that

² Federal courts sitting in diversity apply state substantive law and federal procedural law. *In re County of Orange*, 784 F.3d 520, 523-24 (9th Cir. 2015).

1 [he] had a lessened capacity to make a free contract and (2) that the other party applied its
2 excessive strength to [him] to secure [his] agreement.” *Olam v. Cong. Mortg. Co.*, 68 F.Supp.2d
3 1110, 1141 (N.D. Cal. 1999). “Although undue influence typically applies in cases where one
4 party’s lessened capacity is due to physical, mental or emotional constraints, courts have held
5 that undue influence is flexible and requires an analysis of all of the relevant facts and
6 circumstances.” *Big Sky Ventures I, L.L.C. v. Pac. Cap. Bancorp.*, N.A., No. CV 08-00231 DDP
7 (VBKx), 2008 WL 11334474, at *6 (C.D. Cal. May 6, 2008), citing *Olam*, 68 F.Supp.2d at 1141-
8 42.

9 Plaintiff’s first amended complaint fails to allege facts demonstrating undue influence.
10 Plaintiff does not include factual allegations suggesting he had a lessened capacity to make a free
11 contract or that WUSPBA applied its excessive strength to secure his agreement with the terms
12 of the Informal Resolution. Indeed, Plaintiff admits that he sought the advice of his own attorney
13 prior to signing the Informal Resolution. (Doc. 13 at ¶ 33.)

14 **2. Unconscionability**

15 In California, a contract must be both procedurally and substantively unconscionable to
16 be rendered invalid. *Chavarria v. Ralphs Grocery Co.*, 733 F.3d 916, 922 (9th Cir. 2013).
17 California courts invoke a sliding scale, and the more substantively oppressive the contract term,
18 the less evidence of procedural unconscionability is required, and vice versa. *Nagrampa v.*
19 *MailCoups Inc.*, 469 F.3d 1257, 1280-81 (9th Cir. 2006) (“even if the evidence of procedural
20 unconscionability is slight, strong evidence of substantive unconscionability will tip the scale.”);
21 *Compound Sols., Inc. v. CoreFX Ingredients, LLC*, No. 19cv2058-JAH (WVG), 2020 WL
22 3639663, at *3 (S.D. Cal. July 6, 2020). Procedural unconscionability “addresses the
23 circumstances of contract negotiation and formation, focusing on oppression or surprise due to
24 unequal bargaining power.” *Pinnacle Museum Tower Ass’n. v. Pinnacle Market Development*,
25 55 Cal.4th 223, 246 (2012). “Substantive unconscionability pertains to the fairness of an
26 agreement’s actual terms and to assessments of whether they are overly harsh or one-sided.” *Id.*
27 “A contract term is not substantively unconscionable when it merely gives one side a greater
28 benefit;” rather, the term must be “so one-sided as to ‘shock the conscience.’” *Id.*

1 Plaintiff's first amended complaint fails to allege facts demonstrating procedural or
2 substantive unconscionability to support declaratory relief. As noted above, Plaintiff admits that
3 he consulted with his attorney before signing the Informal Resolution, eliminating an inference
4 that the agreement was procedurally unconscionable. Plaintiff's attorney reportedly advised
5 against any negotiation of the terms of the Informal Agreement. (Doc. 13 at ¶ 33.)

6 Plaintiff also fails to demonstrate substantive unconscionability by identifying any terms
7 in the Informal Resolution that are overly harsh or one-sided. Plaintiff takes issue with the
8 requirement in the Informal Resolution that he assign all administrative activity concerning pipe
9 bands he is involved with to other designated representatives of those bands. (Doc. 13 at ¶ 34.)
10 However, Plaintiff's conclusory assertion that this term is unconscionable is not sufficient to
11 demonstrate that it is overly harsh or one-sided such that it shocks the conscience. Plaintiff's
12 additional allegations that certain terms in the Informal Resolution were confusing or ambiguous
13 also do not demonstrate that the terms were unfair, overly harsh, or one-sided.

14 Based on the above, the Court finds that Plaintiff fails to state a cause of action for
15 declaratory relief based on undue influence or unconscionability. In light of Plaintiff's existing
16 allegations, it does not appear that Plaintiff can allege additional facts to state a cognizable claim
17 based on undue influence or unconscionability *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.
18 2000). Accordingly, Defendants' motion to dismiss this cause of action will be granted with
19 prejudice.

20 **B. Breach of the Informal Resolution**

21 In his second cause of action, Plaintiff alleges that Defendants breached the Informal
22 Resolution in three ways. First, Plaintiff claims that Defendants breached the Informal
23 Resolution by failing to restore him as a WUSPBA member in good standing as evidenced by
24 Defendant Mann referring to Plaintiff's status as "probation." Plaintiff next alleges that
25 Defendants breached the Informal Resolution by failing to provide him with a signed, dated copy
26 of the Informal Resolution until May 13, 2021. Third, Plaintiff alleges that Defendants failed to
27 work with and welcome him as they do any other member. (Doc. 13 at ¶¶ 36-37.)

28 Defendants contend that Plaintiff fails to allege sufficient facts to overcome a motion to

1 dismiss. In particular, Defendants argue Plaintiff fails to adequately plead that (1) he fully
2 complied with the terms of the Informal Resolution, (2) Defendants breached the Informal
3 Resolution, or (3) Plaintiff was damaged because of any alleged breach. (Doc. 37 at 8-9.)

4 Plaintiff's opposition is not entirely clear. He asserts that he does not seek enforcement
5 of the Informal Resolution, but instead seeks a declaration that WUSPBA breached the
6 agreement, and that the agreement could not be used as a justification to terminate his WUSPBA
7 membership. (Doc. 42 at 6.) Plaintiff asserts that he was damaged "as a result of the breaches
8 by the defendants . . . when the defendants used that agreement to wrongfully terminate his
9 membership on December 11, 2020." (*Id.*) Plaintiff also asserts that the damages were not
10 apparent until he received a March 19, 2020 e-mail from Defendant Mann stating that he was on
11 probation, which Plaintiff alleges was in violation of the Informal Resolution. (*Id.* at 7.)

12 To state a claim for breach of contract under California law, Plaintiff must allege (1) the
13 existence of a contract; (2) plaintiff's performance or excuse for nonperformance; (3)
14 defendant's breach of the contract; and (4) damages flowing from the breach. *CDF Firefighters*
15 *v. Maldonado*, 158 Cal.App 4th 1226, 1239 (2008). At a minimum, "[t]he complaint must
16 identify the specific provision of the contract allegedly breached by the defendant." *A.B.*
17 *Concrete Coating Inc. v. Wells Fargo Bank, Nat'l Ass'n*, 491 F.Supp.3d 727, 735 (E.D. Cal.
18 2020).

19 Plaintiff fails to state a cognizable breach of contract claim. First, as Defendants
20 correctly note, Plaintiff fails to adequately allege his performance (or excuse for
21 nonperformance) under the Informal Resolution. Indeed, Plaintiff's first amended complaint
22 explicitly alludes to his violation of a term in the Informal Resolution when he threatened legal
23 action in his correspondence. (Doc. 13 at ¶ 35 ("The third term was that the plaintiff refrain from
24 making threats of legal action against the WUSPBA. The plaintiff did state in one of his emails
25 that he would take legal action . . . The WUSPBA was not directly or indirectly threatened by the
26 plaintiff's statement because the only legal action possible would have been against the contest
27 sponsor . . .").) Moreover, as discussed below in greater detail, Plaintiff's own exhibits
28 undermine any inference that he performed under the Informal Resolution and instead indicate

1 that he engaged in conduct violating its express terms.

2 Second, Plaintiff fails to adequately allege that Defendants breached the Informal
3 Resolution. As noted above, Plaintiff alleges that Defendants breached the Informal Resolution
4 by failing to reinstate his membership in good standing and instead placing him on probation.
5 Plaintiff's allegations do not establish that Defendants failed to restore Plaintiff as a WUSPBA
6 member in good-standing subject to the conditions set forth in the Informal Resolution. That
7 Defendant Mann referred to Plaintiff as on "probation" in an email is not sufficient to state a
8 claim for breach of contract. Rather, Defendant's Mann reference plainly suggests that
9 Plaintiff's membership in good standing was conditioned upon his compliance with the terms of
10 the Informal Resolution.

11 Plaintiff also alleges that Defendants breached the Informal Resolution by failing to
12 provide him with a signed, dated copy of the agreement. However, Plaintiff cites no provision
13 demonstrating that this purported failure was a breach of the Informal Resolution. Critically,
14 Plaintiff does not assert that he was prevented from requesting or otherwise obtaining a signed
15 copy at any time.

16 Plaintiff additionally alleges that WUSPBA failed to work with and welcome him as they
17 do any other member in violation of the express terms of the Informal Resolution. This
18 allegation is sufficiently indiscriminate such that it fails to support a cognizable breach of
19 contract claim. The Court recognizes Plaintiff's assertion that WUSPBA failed to help him
20 recover entry fees from the 2020 Las Vegas Highland Games and this failure demonstrated
21 WUSPBA's refusal to work with him like any other member in good standing. (Doc. 13 at §
22 37.)

23 The exhibits attached to the first amended complaint show otherwise. A review of
24 Plaintiff's email correspondence to WUSPBA dated March 11, 2020, and attached to the first
25 amended complaint, indicates that Plaintiff contacted WUSPBA personally and on behalf of his
26 Kern County Pipe Band in an effort to recover fees. Indeed, Plaintiff's email expressly requests
27 that WUSPBA "consider this an official notice and request from the Kern County Pipe Band and
28 from the Pipe Major of that band: John Eric Partanen, PhD . . ." (Ex. 4 to Doc. 13.) Plaintiff's

1 communication on behalf of the Kern County Pipe Band violated the written terms of the
2 Informal Resolution, which required Plaintiff to assign all WUSPBA-related administrative
3 activity concerning the Pipe Bands he was involved with to other designated representatives of
4 those Pipe Bands. (Ex. 2 to Doc. 13, Informal Resolution.) Plaintiff cannot be heard to
5 complain about Defendants' conduct occurring after Plaintiff's breach (or nonperformance) of
6 the Informal Resolution.

7 As a final matter, Plaintiff does not allege that he was damaged by any of the asserted
8 breaches of the Informal Resolution. Instead, Plaintiff claims that he was damaged because
9 WUSPBA terminated his membership in reliance on the Informal Resolution. The Informal
10 Resolution does not preclude termination of Plaintiff's membership. Plaintiff's theory of
11 damages based on termination of his membership under the terms of the Informal Resolution is
12 insufficient to support a breach of contract claim against WUSPBA or Defendant Mann.

13 For these reasons, Defendants' motion to dismiss Plaintiff's breach of contract claim will
14 be granted. However, Plaintiff will be granted an opportunity to amend this claim to the extent
15 he is able to do so in good faith.

16 **C. Defamation**

17 In his third cause of action, Plaintiff asserts defamation and defamation per se. Plaintiff
18 alleges three instances of defamation: (1) when Defendant Mann made a "libelous statement that
19 the plaintiff . . . was infringing copyright owned by the defendant, WUSPBA,"; (2) when
20 WUSPBA terminated Plaintiff's membership; and (3) when Defendant Mann accused Plaintiff of
21 bullying. (Doc. 13 at ¶¶ 38-40.)

22 To state a prima facie case for defamation, Plaintiff must allege facts that show
23 Defendants made "(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and
24 that (e) has a natural tendency to injure or that causes special damage." *Narayan v. Compass*
25 *Grp. USA, Inc.*, 284 F.Supp.3d 1076, 1085 (E.D. Cal. 2018) (quoting *Taus v. Loftus*, 40 Cal.4th
26 683, 720 (2007). Publication is communication of the allegedly defamatory statement "to a third
27 person who understands its defamatory meaning as applied to the plaintiff." *Id.* (quoting *Shively*
28 *v. Bozanich*, 31 Cal.4th 1230, 1242 (2003)). "Communicating the allegedly defamatory

1 statement to the plaintiff alone, without more, does not constitute ‘publication’ for the purposes
2 of evaluating a defamation claim.” *Id.* “Under California law, defamation per se is ‘libel which
3 is defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement,
4 innuendo or other extrinsic fact, is said to be a libel on its face.’” *Cleveland v. Ludwig Inst. for
5 Cancer Rsch. Ltd.*, No. 19cv2141 JM (JLB), 2020 WL 3268578, at *12 (S.D. Cal. June 17, 2020)
6 (quoting Cal. Civ. Code § 45a).

7 Defendants contend that Plaintiff’s defamation and defamation per se claims are
8 deficient. First, Defendants argue that Defendant Mann’s statement regarding copyright
9 infringement was not defamatory and was a privileged, pre-litigation statement directed to a third
10 party. Plaintiff counters that the copyright statement was not a privileged, pre-litigation demand
11 and was clearly directed at him.

12 At issue is the following email message, attached as an exhibit to the first amended
13 complaint, purportedly sent from Defendant Mann to Plaintiff and Gary Speed on May 12, 2020:

14 John,

15 This is all I received. Also, we need to talk about your facebook page that Gary
16 put up. You cannot post a facebook page using the WUSPBA.org. It is against
17 US copywrite law according to one of our lawyers. This is what he says about the
18 verbiage: “The way the Courts interpret copyright law is not to look at the
19 differences, but look at the similarities. He is misleading the public into believing
20 this is a WUSPBA sponsored page.” So you will need to change the wording.

21 I am however, happy to put your information on the WUSPBA website.

22 Best,

23 Jeff

24 (Doc. 13 at Ex. 6.) Plaintiff alleges that this statement was made to Gary Speed and “on belief to
25 twelve other members of the WUSPBA Executive Committee.” (*Id.* at ¶ 38.a.) Plaintiff further
26 alleges that Defendant Mann failed to use reasonable care to determine the truth or falsity of the
27 accusation of copyright infringement, asserting that there is no registered copyright for
28 WUSPBA. (*Id.* at ¶ 38.d.)

29 At a basic level, Plaintiff’s allegations do not establish that the alleged defamatory
30 statement was communicated to a third party. The email message concerned statements on a

1 Facebook page reportedly set up by Gary Speed and the message was directed to both Plaintiff
2 and Gary Speed. Accordingly, any statement by Defendant Mann concerning copyright
3 infringement was communicated directly to the person or persons allegedly responsible for the
4 Facebook page and its content, not a disinterested or independent third party. Plaintiff's
5 assertion "on belief" that the statement was made to members of the WUSPBA Executive
6 Committee is speculative and not sufficient to demonstrate publication to a third party.

7 Second, Defendants argue that Plaintiff fails to identify any statement made by WUSPBA
8 that was defamatory. The Court agrees. Plaintiff alleges that WUSPBA "committed a
9 Defamatory act against the plaintiff when it wrongfully terminated the plaintiff's membership in
10 the WUSPBA on December 11, 2020 over truly trivial matters, accusing the plaintiff of
11 breaching an agreement that the defendant had already breached in 2018, and of violations of the
12 WUSPBA Code of Conduct of which each and every such violation is without merit." (Doc. 13
13 at ¶ 39.) Plaintiff further alleges that the "membership of the WUSPBA believes the plaintiff has
14 done something terrible or evil to have been expelled from the WUSPBA causing irreparable
15 damage to the plaintiff's reputation and causing the plaintiff to needlessly suffer shame,
16 mortification, and hurt feelings." (*Id.*) These allegations are not sufficient to support a
17 defamation cause of action against WUSPBA. At a minimum, Plaintiff fails to allege publication
18 of a false statement as there is no dispute that Plaintiff's WUSPBA membership was terminated.

19 Third, Defendants argue that Plaintiff's claim regarding Defendant Mann's alleged
20 accusations of bullying are time barred. They also were not published and constituted opinion
21 only. Plaintiff counters that his claims regarding Defendant Mann's bullying statements are not
22 time barred because those claims were not rejected by the WUSPBA Executive Committee until
23 December 5, 2020.

24 At issue appear to be two separate emails. First, is an email from Defendant Mann to
25 Plaintiff dated March 19, 2020, which states as follows:

26 John,

27 As you know....NO MORE THREATS!!! Period! We are working on the money
28 situation. I am dealing with a 5.7 earthquake and COVID-19. I nor any of the
WUSPBA EC will tolerate your bullying anymore. If you want to remain an

1 adjudicator you will stop this instant.

2 I know your money is important. We are working on that. You will not make
3 demands. PERIOD!

4 Best,

5 Jeff

6 (Doc. 13 at Ex. 4.) Second, is a subsequent email from Defendant Mann to Plaintiff on
7 March 20, 2020 at 8:20 AM stating, in relevant part, as follows:

8 Now, I want to talk to you a moment about your bullying attitude. You are
9 breaking the WUSPBA Code of Conduct for adjudicators. I think that you have a
lot to offer on our adjudicator panel. Your knowledge and judging ability brings a
great talent to the WUSPBA. I do not want to lose you as one of our adjudicators.

10 As far as your thoughts on an online contest, I think it is a brilliant idea.

11 Now, I want you to shape up and stop this nonsense. John, you really have some
12 brilliant ideas at times. However, the way you go about presenting them in a
13 demanding and bullying manner is not the way to do it. It just will not be
tolerated. Try honey instead of salt into the wounds that you have already created
14 over the years.

15 (Doc. 13 at Ex. 4.)

16 The Court finds Plaintiff's amended complaint fails to state a cognizable defamation
17 claim based on Defendant Mann's alleged accusations of bullying. There is no indication that
18 the statements at issue were published to a third party. As indicated above, communicating the
19 allegedly defamatory statement to the plaintiff alone, does not constitute publication for the
20 purposes of a defamation claim. *Narayan*, 284 F.Supp.3d at 1085. Even if communicated to a
21 third party, the statements do not appear to constitute anything more than Defendant Mann's
22 opinion concerning Plaintiff's conduct. A statement of opinion will not suffice to state a claim
23 for defamation. *Avenmarg v. Humboldt Cty.*, No. 19-cv-05891-RMI, 2020 WL 4464876, at *12
24 (N.D. Cal. Aug. 4, 2020), appeal dismissed, No. 20-16716, 2020 WL 7212390 (9th Cir. Nov. 25,
25 2020).

26 Based on the above, the Court finds that Plaintiff fails to state a cause of action for
27 defamation or defamation per se. Based on the exhibits attached to the first amended complaint,
28 it does not appear that Plaintiff can allege additional facts sufficient to state a cognizable claim.

1 *Lopez*, 203 F.3d at 1130. Accordingly, Defendants' motion to dismiss this cause of action will
2 be granted with prejudice.

3 **D. Bullying**

4 In his fourth cause of action, Plaintiff alleges that WSUPBA has bullied and continues to
5 bully him by declaring, through its counsel, that Plaintiff and his bagpipe band will be
6 disqualified if he enters and competes in WUSPBA sanctioned events. (Doc. 13 at ¶ 41.)

7 Defendants argue that this claim should be dismissed with prejudice because "bullying"
8 is not a cause of action. Plaintiff admits that bullying "is not a cognizable complaint unless it is
9 in the form of First Amendment Retaliation." (Doc. 42 at 12.) Plaintiff indicates that he will
10 petition the Court to add such a claim to his complaint. (Doc. 42 at 11.) The Court notes that
11 Plaintiff also has requested leave to amend his complaint to eliminate bullying as a cause of
12 action, remarking that he has become aware and verified that bullying is not a cognizable cause
13 of action in federal court. (See Doc. 61 at 5.)

14 Based on Plaintiff's concession that bullying is not a cognizable cause of action,
15 Plaintiff's fourth cause of action will be dismissed with prejudice. However, Plaintiff will not be
16 precluded from amending his complaint to allege an appropriate retaliation-based claim to the
17 extent that he can do so in good faith. The Court makes no determination regarding the merits of
18 such a claim at this time.

19 **E. Coercion**

20 In his fifth cause of action, Plaintiff asserts a violation of the California Bane Act, Cal.
21 Civ. Code § 52.1. (Doc. 13 at ¶ 42.) Plaintiff alleges that Defendant Mann sent threatening
22 emails to coerce Plaintiff to cease asking for help in the recovery of entry fees from the 2020 Las
23 Vegas Highland Games. Plaintiff further alleges that Defendant Mann used coercion to interfere
24 with and stop Plaintiff's campaign for Vice-President of the WUSPBA when Defendant Mann
25 allegedly accused Plaintiff of copyright infringement in email correspondence. (*Id.*)

26 California's Bane Act creates a private cause of action against individuals who interfere
27 "by threat, intimidation, or coercion, or attempt[] to interfere by threat, intimidation, or coercion,
28 with the exercise or enjoyment by an individual or individuals of rights secured by the

1 Constitution or laws of the United States, or laws and rights secured by the Constitution or laws
2 of [California].” Cal. Civ. Code § 52.1(b)–(c). A plaintiff bringing claims under the Bane Act
3 must show (1) intentional interference or attempted interference with a state or federal
4 constitutional or legal right, and (2) the interference or attempted interference was done through
5 threats, intimidation, or coercion. *Scalia v. County of Kern*, 308 F.Supp.3d 1064, 1080 (E.D. Cal.
6 2018); *Allen v. City of Sacramento*, 234 Cal.App.4th 41, 67 (Cal. Ct. App. 2015). Speech alone
7 does not satisfy the threat, intimidation, or coercion requirement unless the speech threatened
8 violence. *Gifford v. Hornbrook Fire Prot. Dist.*, No. 2:16-CV-0596-JAM-DMC, 2021 WL
9 4168532, at *28 (E.D. Cal. Sept. 14, 2021); *Feiger v. Smith*, No. 1:14-cv-01920-DAD-EPG,
10 2017 WL 431352, at *1 (E.D. Cal. Jan. 31, 2017) (“An allegation of either violence or the threat
11 of violence is only necessary if the alleged violations of the Bane Act are based entirely on
12 speech.”).

13 Plaintiff’s allegations are insufficient to support a violation of the Bane Act. He does not
14 allege that any of the statements or speech at issue in Defendant Mann’s emails threatened
15 violence. He also has not plead any facts suggesting threats of violence in his amended
16 complaint. In light of Plaintiff’s existing allegations, it does not appear that Plaintiff can allege
17 additional facts to state a cognizable claim. Accordingly, Defendants’ motion to dismiss this
18 cause of action will be granted with prejudice.

19 **F. Intentional Infliction of Emotional Distress**

20 In his sixth cause of action, Plaintiff alleges intentional infliction of emotional distress.
21 (Doc. 13 at ¶ 43.) “A complaint states a claim for intentional infliction of emotional distress
22 when it alleges (1) the defendant’s conduct was outrageous; (2) the defendant either intended to
23 cause emotional distress or acted with reckless disregard to the probability of causing emotional
24 distress; (3) the plaintiff suffered severe emotional distress; and (4) the defendant’s conduct
25 actually and proximately caused that emotional distress.” *Tennyson v. Sacramento*, No. 2:19-cv-
26 00429-KJM-EFB, 2021 WL 2142733, at *9 (E.D. Cal. May 26, 2021) (citing *Nally v. Grace*
27 *Cnty. Church*, 47 Cal. 3d 278, 300 (1988).) “Conduct, to be outrageous, must be so extreme as
28 to exceed all bounds of that usually tolerated in a civilized society.” *King v. AC & R Advert.*, 65

1 F.3d 764, 770 (9th Cir. 1995) (citation and quotation omitted). To be actionable, emotional
2 distress must be “of such substantial quantity or during quality that no reasonable man in a
3 civilized society should be expected to endure it.” *Simo v. Union of Needletrades*, 322 F.3d 602,
4 622 (9th Cir. 2003) (citation omitted). A claim for intentional infliction of emotional distress is
5 subject to a two-year statute of limitations. Cal. Civ. Proc. Code § 335.1; *Van Osten v. Home*
6 *Depot, U.S.A., Inc.*, No. 19-CV-2106 TWR (BGS), 2021 WL 3913483, at *12 (S.D. Cal. Aug.
7 27, 2021)

8 Insofar as Plaintiff’s amended complaint asserts a claim for intentional infliction of
9 emotional distress based on events taking place in November 2017 and February 2018, such a
10 claim is time barred. (Doc. 13 at ¶¶ 44-45.) Plaintiff did not initiate this action until April 8,
11 2021, more than two years after these alleged events. (Doc. 1.) Accordingly, Plaintiff’s claim
12 for intentional infliction of emotional distress based on events taking place more than two years
13 prior to April 8, 2021, will be dismissed with prejudice.

14 Plaintiff’s amended complaint additionally bases a claim for intentional infliction of
15 emotional distress on the termination of his WUSPBA membership at the end of 2020. In
16 relevant part, Plaintiff alleges as follows:

17 At the end of 2020, the newly elected WUSPBA Executive Committee, many of
18 whom were on the 2018 WUSPBA Executive Committee, met after the 2020
19 WUSPBA annual general meeting and voted to terminate and expel the plaintiff
20 from the WUSPBA. The 2021 WUSPBA Executive Committee knew that this
21 would cause the plaintiff to again suffer an enormous amount of emotional
22 distress, while at the same time they could have their revenge by retaliating
against the plaintiff. The defendants, WUSPBA, terminated the plaintiff’s
membership maliciously, and expelled him from the WUSPBA over truly trivial
matters causing the plaintiff to suffer an extraordinary amount of severe
emotional distress. Against all the required elements for intentional infliction of
emotional distress by the defendant upon the plaintiff are present.

23 (Doc. 13 at ¶ 46.)

24 These allegations are insufficient to support a cognizable claim for intentional infliction
25 of emotional distress. Plaintiff’s amended complaint fails to adequately allege outrageous
26 conduct by any defendant that is so extreme as to exceed all bounds of that usually tolerated in a
27 civil society. Termination of Plaintiff’s membership in the WUSPBA does not equate with
28 outrageous conduct, as a matter of law. Plaintiff’s conclusory assertions also do not suffice. It is

1 not evident on the face of the complaint or in any relevant exhibits that Plaintiff can allege
2 additional facts to state a cognizable claim. Accordingly, Plaintiff's cause of action for
3 intentional infliction of emotional distress based on termination of his WUSPBA membership
4 will be dismissed with prejudice. m

5 **G. Statutory Violations of Nevada Law**

6 In his seventh cause of action, Plaintiff alleges that WUSPBA violated Nevada Revised
7 Statutes ("NRS"), Chapter 82, governing Nonprofit Corporations. In particular, Plaintiff
8 contends that WUSPBA violated NRS 82.251, 82.321 and 82.316. (Doc. 13 at ¶¶ 47-50.)

9 **NRS 82.251**

10 NRS 82.251 concerns expulsion, suspension or termination of membership and provides,
11 in relevant part, as follows:

- 12 1. A member may not be expelled or suspended, and a membership may not be
13 terminated or suspended, except pursuant to a procedure that is fair and
reasonable and is carried out in good faith. This section does not apply to
termination of a membership at the end of a fixed term.
- 14 2. A procedure is fair and reasonable when it is fair and reasonable taking into
15 consideration all of the relevant facts and circumstances. In addition, a
16 procedure is fair and reasonable if it provides:
 - 17 (a) Not less than 15 days' prior written notice of the expulsion, suspension or
termination, and the reasons for it; and
 - 18 (b) An opportunity for the member to be heard, orally or in writing, not less
than 5 days before the effective date of the expulsion, suspension or
termination by a person authorized to decide that the proposed expulsion,
termination or suspension not take place.

21 Nev. Rev. Stat. § 82.251(1)-(2).

22 In his first amended complaint, Plaintiff alleges that WUSPBA violated NRS
23 82.251(2)(b) in February 2018 when the Executive Committee failed to allow Plaintiff an
24 opportunity to be heard and failed to have a person authorized to decide that Plaintiff's
25 membership not be terminated. Plaintiff asserts that this failure was a "major factor in the
26 decision by the 2018 WUSPBA Music Board to overturn the plaintiff's membership termination
27 in May 2018." (Doc. 13 at ¶ 47.) Plaintiff further alleges that WUSPBA violated NRS
28 82.251(2)(b) when it terminated his membership effective December 11, 2020. (*Id.* at ¶ 48.)

1 Defendants argue that it is unclear whether NRS 82.251 creates a private cause of action.
2 Defendants claim that the statute appears to contemplate an internal challenge to any purported
3 violation because NRS 82.251(3) explicitly states that “[a] proceeding challenging an expulsion,
4 suspension or termination, including a **proceeding** in which defective notice is alleged, must be
5 begun within 1 year after the effective date of the expulsion, suspension or termination.”
6 (emphasis added). Defendants argue that even if it does create a private right of action, NRS
7 82.251 establishes a one-year statute of limitations and Plaintiff’s allegations concerning the
8 2018 termination of his membership are time barred. (Doc. 37 at 17.) With regard to Plaintiff’s
9 membership termination in December 2020, Defendants argue that WUSPBA complied with all
10 of the requirements of NRS 82.251, and that Plaintiff attached proof of WUSPBA’s compliance
11 to his first amended complaint.

12 Assuming without deciding that NRS 82.251 creates a private cause of action, the Court
13 agrees with WUSPBA that Plaintiff’s allegations regarding his 2018 termination are time barred
14 under NRS 82.251(3). Moreover, Plaintiff’s own allegations indicate that any purported
15 violation of NRS 82.251 was corrected or otherwise ameliorated when the WUSPBA Music
16 Board overturned Plaintiff’s membership termination. (Doc. 13 at ¶ 47.)

17 With respect to termination of Plaintiff’s membership in 2020, the Court finds that
18 Plaintiff fails to include sufficient factual allegations demonstrating that WUSPBA violated the
19 provisions of NRS 82.251. Indeed, Plaintiff’s exhibits attached the first amended complaint
20 belie any argument that WUSPBA failed to comply with NRS 82.251. According to the exhibits,
21 Plaintiff received written notice on November 20, 2020 that the WUSPBA Executive Committee
22 would review his membership at a special meeting on December 5, 2020. The notice identified
23 the reasons for the membership review and informed Plaintiff that he would be given an
24 opportunity to speak, to answer any questions the Executive Committee might have, or to explain
25 his conduct. Plaintiff also was permitted to submit a written statement and any supporting
26 documents no later than November 30, 2020. (Doc. 13 at Ex. 9.) This notice was consistent
27 with the requirements of NRS 82.251 that Plaintiff receive not less than 15 days’ prior written
28 notice of the expulsion, suspension or termination, and the reasons for it, and that he be

1 permitted an opportunity to be heard in writing by the Executive Committee not less than 5 days
2 before the membership review and termination of his membership. Accordingly, Plaintiff cannot
3 state a cognizable claim based on a violation of NRS 82.251, and Defendants' motion to dismiss
4 this claim will be granted with prejudice.

5 NRS 82.321 and 82.316

6 In his seventh cause of action, Plaintiff alleges that WUSPBA violated NRS 82.321
7 regarding members' proxy voting. NRS 82.321 provides in relevant part that “[a]t any meeting
8 of the members of any corporation, any member may designate another person or persons to act
9 as a proxy or proxies.” Nev. Rev. Stat. § 82.321(1). The remainder of the statute addresses a
10 valid means by which a member may grant proxy authority and length of time such proxy is
11 valid. Nev. Rev. Stat. § 82.321(2)-(4). Plaintiff contends that WUSPBA allows member pipe
12 bands to vote by proxy, but has refused to allow solo pipers, solo drummers, and solo drum
13 majors to vote by proxy. (Doc. 13 at 27.)

14 Plaintiff further alleges that WUSPBA violated NRS 82.316 regarding determination of
15 members entitled to notice of and to vote at meetings. NRS 82.316 states as follows:

- 16 1. Unless contrary provisions are contained in the articles or bylaws, the
17 directors may prescribe a period not exceeding 60 days before any meeting of
18 the members during which no transfer of memberships on the books of the
19 corporation may be made, or may fix a day not more than 60 days before the
holding of any meeting of members as the day as of which members entitled
to notice of and to vote at the meeting must be determined. Only members of
record on that day are entitled to notice or to vote at the meeting.
- 20 2. The directors may adopt a resolution prescribing a date upon which the
21 members of record are entitled to give written consent pursuant to NRS
22 82.276. The date prescribed by the directors may not precede nor be more
23 than 10 days after the date the resolution is adopted by the directors. If the
24 directors do not adopt a resolution prescribing a date upon which the members
of record are entitled to give written consent pursuant to NRS 82.275 and:
 - 25 (a) No prior action by the directors is required by this chapter, the date is
the first date on which a valid written consent is delivered in
accordance with the provisions of NRS 82.276.
 - 26 (b) Prior action by the directors is required by this chapter, the date is at
the close of business on the day on which the directors adopt the
resolution taking the required action.

27
28 Nev. Rev. Stat. § 82.316. Plaintiff contends that the WUSPBA has failed to determine and make

1 a list of membership in the WUSPBA and send to each member a notice that they are entitled to
2 vote both at the annual general meeting and by proxy if they are unable to attend the annual
3 general meeting. (Doc. 13 at 28.)

4 Defendants argue, and Plaintiff has not contested, that neither NRS 82.321 nor NRS
5 82.316 provide for a private cause of action. Plaintiff does not point to any provision in these
6 statutes authorizing a private cause of action. “[W]hen a statute does not expressly provide for a
7 private cause of action, the absence of such a provision suggests that the Legislature did not
8 intend for the statute to be enforced through a private cause of action.” *Hybrid Int'l, LLC v.*
9 *Scotia Int'l of Nevada, Inc.*, No. 2:19-CV-2077 JCM (EJY), 2020 WL 4289372, at *4 (D. Nev.
10 July 27, 2020), quoting *Richardson Constr., Inc. v. Clark Cnty. Sch. District*, 156 P.3d 21, 23
11 (Nev. 2007). In the absence of express statutory authorization, Plaintiff cannot bring claims for
12 asserted violations of NRS 82.321 and NRS 82.316. Accordingly, these claims will be dismissed
13 with prejudice.

14 **IV. Plaintiff's Motions to Amend**

15 On September 9, 2021, Plaintiff filed a motion to amend his complaint to eliminate his
16 bullying cause of action and to add a cause of action for breach of the duty of good faith and fair
17 dealing. (Doc. 61.) Defendants opposed the motion in part on procedural grounds based on
18 Plaintiff's failure to include a proposed amended complaint. (Doc. 62.) In lieu of a reply, on
19 September 29, 2021, Plaintiff re-filed his motion to amend and lodged a proposed Second
20 Amended Complaint. (Docs. 63, 64.) Plaintiff subsequently filed a reply to Defendants'
21 opposition on October 5, 2021. (Doc. 65.)

22 For the reasons discussed in this order, Plaintiff may file an amended complaint to cure
23 the identified deficiencies in this order, but any amended complaint may not amend the claims
24 dismissed with prejudice. Accordingly, Plaintiff's motions seeking leave to amend his complaint
25 are unnecessary and will be denied as moot.

26 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
27 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, *Iqbal*,
28 556 U.S. at 678-79. Although accepted as true, the “[f]actual allegations must be [sufficient] to

1 raise a right to relief above the speculative level” *Twombly*, 550 U.S. at 555 (citations
2 omitted).

3 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
4 claims in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
5 “buckshot” complaints). Further, Plaintiff’s amended complaint should not include those claims
6 dismissed with prejudice.

7 Finally, Plaintiff is advised that an amended complaint supersedes the original
8 complaint. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff’s
9 amended complaint must be “complete in itself without reference to the prior or superseded
10 pleading.” Local Rule 220.

11 **CONCLUSION AND ORDER**

12 Based on the foregoing, it is HEREBY ORDERED as follows:

- 13 1. Defendants’ motion to dismiss (Doc. 37) is granted;
- 14 2. Plaintiff’s first cause of action for declaratory relief based on undue influence or
15 unconscionability is dismissed with prejudice;
- 16 3. Plaintiff’s second cause of action for breach of contract is dismissed without
17 prejudice and with leave to amend;
- 18 4. Plaintiff’s third cause of action for defamation and defamation per se is dismissed
19 with prejudice;
- 20 5. Plaintiff’s fourth cause of action for bullying is dismissed with prejudice;
- 21 6. Plaintiff’s fifth cause of action for coercion and violation of California’s Bane Act is
22 dismissed with prejudice;
- 23 7. Plaintiff’s sixth cause of action for intentional infliction of emotional distress is
24 dismissed with prejudice;
- 25 8. Plaintiff’s seventh cause of action for statutory violations of Nevada law is dismissed
26 with prejudice;
- 27 9. Plaintiff’s motions to amend (Docs. 61 and 62) are denied as moot;
- 28 10. Plaintiff is granted thirty (30) days from the date of service of this order to file a

1 Second Amended Complaint consistent with this order or, in the alternative, notify
2 the Court that he does not wish to proceed with this action;

3 11. Defendants will have twenty-one (21) days from the date of electronic service of any
4 Second Amended Complaint to answer or otherwise respond to the Second Amended
5 Complaint.

6 IT IS SO ORDERED.
7

8 Dated: November 4, 2021

/s/ Barbara A. McAuliffe

9 UNITED STATES MAGISTRATE JUDGE

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